

FILED
LORAIN COUNTY

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LORAIN COUNTY

IN THE COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO

13CV179583

STATE OF OHIO, ex rel.
MICHAEL DeWINE
OHIO ATTORNEY GENERAL,

CASE NO. :
JUDGE JUDGE JOHN R. MIRALDI

Plaintiff,

v.

LORAIN COUNTY LANDFILL, LLC
c/o CT Corporation System
Statutory Agent
1300 East Ninth Street
Cleveland, Ohio 44114,

CONSENT ORDER

and

BIO ENERGY (OHIO II), LLC
c/o CT Corporation System
Statutory Agent
1300 East Ninth Street
Cleveland, Ohio 44114,

Defendants.

The Complaint in the above-captioned matter having been filed herein, and Plaintiff State of Ohio, by its Attorney General, Michael DeWine ("Plaintiff" or "State"), and Defendant Bio Energy (Ohio II), LLC ("BEO") having consented to the entry of this Order;

NOW THEREFORE, without trial of any issue of fact or law, without any admission of any issues of law, liability or fact, and upon consent of the Parties hereto, it is **ADJUDGED, ORDERED, and DECREED** as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the Parties and the subject matter of this action pursuant to Revised Code, Chapters 3704 and 3734. Venue is proper in this Court. Solely for

purposes of this Consent Order and the underlying Complaint, BEO does not contest that the Complaint states a claim upon which relief can be granted against BEO.

II. PARTIES

2. BEO is in the business of landfill gas extraction and conversion of landfill gas into green energy.

3. BEO is a “person” as that term is defined in R.C. 1.59(C), 3704.01(O), 3734.01(G), and OAC 3745-27-01(P)(3).

4. The provisions of this Consent Order shall apply to and are binding upon the Parties to this action and any person who would be bound pursuant to Rule 65(D) of the Ohio Rules of Civil Procedure.

III. SATISFACTION OF LAWSUIT

5. The State alleges in its Complaint that the Defendants have violated Revised Code Chapters 3704, 3734, and 3767, and Ohio Administrative Code (OAC) Chapters 3745-15 and 3745-27. BEO denies such allegations. The Parties have agreed to resolve the disputed issues in this matter without adjudication of any issues of fact or law. Entry into this Consent Order shall constitute full satisfaction of any civil liability for matters addressed in Plaintiff’s Complaint.

6. Except as otherwise provided in Paragraph 7 of this Consent Order, compliance with the terms of this Consent Order shall constitute full satisfaction of any civil and administrative liability of BEO, BEO’s members, managers, officers, directors, employees, agents, servants, successors and assigns, as well as BEO’s parent and sister corporations or entities and their respective members, managers, officers, directors, employees, agents, servants, successors, assigns, predecessors in interest, and successors in interest, for the claims alleged in the State’s Complaint.

7. Nothing in this Consent Order shall be construed to limit the authority of the State to seek relief from BEO for: (A) claims or violations not referenced in the Complaint; (B) any violations arising out of acts or omissions first occurring after the effective date of this Consent Order; or (C) claims or violations under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. §§9601 et seq. or R.C. 3734.20 through 3734.27 for any emergency, removal, remedial, corrective actions, or natural resource damages. BEO shall retain all rights, defenses, and/or claims it may legally raise to the extent that the State seeks further relief from BEO in the future, or in any action brought to enforce the terms of this Consent Order, except that BEO shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim splitting, or other defenses based upon any contention that the claims raised by the State in subsequent proceedings were or should have been brought in the instant case.

8. Entering into this Consent Order, the Consent Order itself, or the taking of any action in accordance with the Consent Order and/or any work performed at the site does not constitute an admission of any liability, wrongdoing, or misconduct on part of BEO, their agents, members, managers, officers, directors, employees, agents, servants, successors and assigns or related corporate entities.

9. Nothing herein shall be construed to relieve BEO of its obligation to comply with all applicable federal, state, or local statutes, regulations, or ordinances, including but not limited to the applicable permit requirements.

10. Nothing in this Consent Order shall constitute or be construed as a satisfaction of lawsuit, release, or a covenant not to sue regarding any claim alleged in the Complaint, or any other claim or cause of action, against any person, firm, trust, joint venture, partnership,

corporation, association, or other entity, excluding BEO's related corporate entities, not a signatory to this Consent Order for any liability they may have arising out of, or relating to, the site including, but not limited to, those identified in the Complaint.

IV. INJUNCTIVE RELIEF

11. BEO shall notify Lorain County Landfill and Ohio EPA Northeast District Office a minimum of 5 calendar days prior to any scheduled, non-emergency, maintenance event that will require the taking of more than one quarter (1/4) of their operating engines offline for a period of time in excess of twenty-four (24) hours. This notice shall include the reason for taking the action and an expected date that the engines will be running back at full capacity. The process of notification is more accurately reflected in Exhibit A.

12. In the event that more than one quarter (1/4) of the operating engines unexpectedly go offline for a period of time in excess of eight (8) hours, BEO must notify Lorain County Landfill and Ohio EPA Northeast District Office within 1 day of this occurrence. The process of notification is more accurately reflected in Exhibit B.

13. Notices required to be made pursuant to this Section may be made by facsimile transmission, and/or email, at the sole discretion of BEO..

V. CIVIL PENALTY

14. Within 20 days of entry of this Consent Order, BEO shall pay a civil penalty of fifty thousand dollars (\$50,000) to the State. Such payment shall be made by delivering to Martha Sexton, Paralegal, or her successor, Office of the Attorney General, 30 E. Broad Street, 25th Floor, Columbus, Ohio 43215-3400, a check or checks for the appropriate amount, payable to the order of "Treasurer, State of Ohio."

VI. STIPULATED PENALTIES

15. In the event that BEO fails to comply with any of the requirements of Sections IV and/or of this Consent Order, BEO shall immediately and automatically be liable for and shall pay a stipulated penalty in accordance with the following schedule:

- a. BEO shall pay one hundred dollars (\$100.00) per day for each day any requirement of this Consent Order is violated up to thirty (30) days;
- b. BEO shall pay two hundred fifty dollars (\$250.00) per day for each day any requirement of this Consent Order is violated for thirty-one (31) days through ninety (90) days;
- c. BEO shall pay four hundred dollars (\$400.00) per day for each day any requirement of this Consent Order is violated for ninety (90) or more days.

16. Stipulated penalties due under this Consent Order shall be due and owing without further demand by the State and shall be paid by check or money order, payable to "Treasurer, State of Ohio" and mailed to Martha Sexton or her successor, Paralegal, at the Office of the Attorney General of Ohio, Environmental Enforcement Section, 30 East Broad Street, 25th Floor, Columbus, Ohio 43215-3400.

VII. NOTICES

17. All documents required to be submitted under this Consent Order shall be submitted to the following, or their successor:

As to Plaintiff:

Ohio Environmental Protection Agency
Northeast District Office
Solid Waste Supervisor
2110 East Aurora Rd.
Twinsburg, Ohio 44087

As to BEO:

Attention: President
3322 West End Avenue, Suite 115
Nashville, TN 37203

with copies to:
Terrence M. Fay
Thompson Hine LLP
41 S. High Street, Suite 1700
Columbus, OH 43215

As to LCLF:

Division Manager, Lorain County Landfill
43502 Oberlin-Elyria Rd.
Oberlin, OH 44074
RKostelnick@republicservices.com

18. Either Party may change the name or address of its contact person(s) by serving written notice to the other party.

VIII. RETENTION OF JURISDICTION AND WAIVER OF SERVICE

19. The Court will retain jurisdiction of this action for purposes of enforcing this Consent Order during the effective term thereof. BEO waives service of the Complaint and summons in this action.

IX. EFFECTIVE DATE

20. This Consent Order shall be effective upon the date of its entry by the Court.

X. TERMINATION DATE

21. BEO shall not petition this Court to terminate this Consent Order until after December 31, 2014.

XI. COURT COSTS

22. BEO is hereby ordered to pay all court costs of this action.

XII. SIGNATORIES

23. Each of the undersigned representatives of the Parties represents that he/she is fully authorized to enter into the terms and conditions of this Consent Order and legally bind the respective party to this document.

XIII. ENTRY OF CONSENT ORDER AND JUDGMENT BY CLERK

24. Pursuant to Rule 58 of the Ohio Rules of Civil Procedure, upon signing of this Consent Order by the Court, the Clerk is directed to enter it upon the journal. Within three (3) days of entering the judgment upon the journal, the Clerk is directed to serve upon all parties notice of the judgment and its date of entry upon the journal in the manner prescribed by Rule 5(B) of the Ohio Rules of Civil Procedure and note the service in the current docket.

IT IS SO ORDERED:

03/05/13
Date

John R. Winaldi
Judge, Lorain County Court of
Common Pleas

APPROVED BY:

MICHAEL DeWINE
Ohio Attorney General

NICHOLAS J. BRYAN

(0079570)
Associate Attorney General
Environmental Enforcement Section
30 East Broad Street, 25th Street
Columbus, Ohio 43215
Telephone: (614) 466-2766
Facsimile: (614) 466-1926

*Attorney for Plaintiff
State of Ohio*

Terrence M. Fay

(0022935)
Thompson Hine LLP
41 South High Street, 17th Floor
Columbus, OH 43215
Telephone: (614) 469-3200
Facsimile: (614) 469-3361

*Attorney for Defendant
Bio Energy(Ohio II), LLC*

EXHIBIT A

Scheduled Maintenance:

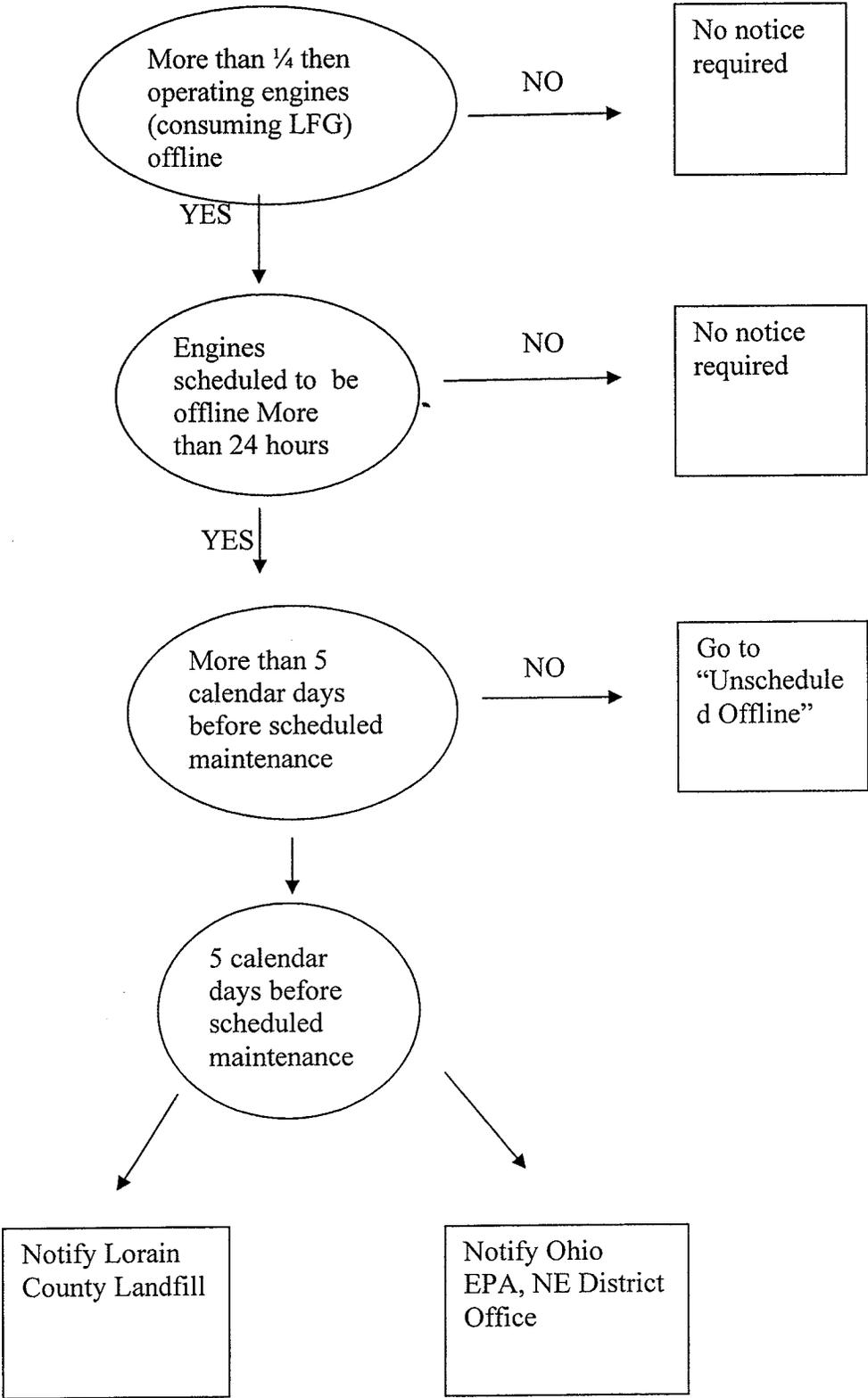


EXHIBIT B

Unscheduled Offline:

